

## Frequently Asked Questions related to the

### **Invitations to tender to deliver publicly funded Mental Health Services in England and Wales**

Many questions will be answered by the information given in the Information for Applicants document (IFA), which is available through the eTendering portal and on the Tenders pages of our website:

<http://www.legalservices.gov.uk/civil/tendering/mentalhealth.asp>

The deadline for submitting questions about the content of the IFA or the Invitations to Tender was **12 noon on 10 March 2010** (note this is referred to as the 'End date for clarification messages' on the eTendering system).

We will continue to respond to technical queries on how to use the eTendering System. Technical questions may be emailed to the following email address: [lscsupport@bravosolution.co.uk](mailto:lscsupport@bravosolution.co.uk). Alternatively, the telephone number for the Helpdesk is 0203 3496610 (charged at a local rate from any national destination).

Please note that we recommend that you start to complete your tender response early so that you identify any areas where you need technical help as soon possible, as the technical team is likely to be very busy in the days leading up to the tender deadline.

Questions that we consider to be of wider interest will be collated and answered centrally in writing to ensure that all interested parties have equal access to information in the answers. These questions and answers will be published regularly in this Frequently Asked Questions (FAQ) document.

A final FAQ document will be published on 17 March 2010.

This FAQ document is broken up into sections for ease of reference. The headings below are links which will take you to the relevant section. These sections are as follows:

1. [Tender Process](#)
2. [Procurement Areas/Offices/Access Points/Presence](#)
3. [New Matter Starts allocated to Procurement Areas](#)
4. [Supervisor requirements](#)
5. [Other quality-related requirements](#)
6. Service and category combinations
7. Minimum New Matter Start requirement
8. [Capacity test](#)
9. [Selection Criteria](#)
10. [Other requirements](#)

For ease of reference, within each section, new questions are in blue text.

## **Section 1: Tender Process**

### **1.1 In some cases the questions say that documentary evidence (e.g. for local arrangements) will be required. How is this documentary evidence submitted?**

Several criteria require that the Applicant Organisation can show, 8 weeks before contract start date, that it meets the criteria.

We will undertake a verification exercise at this stage and we will, if necessary, request any documentary evidence from you. You do not need to submit any additional evidence at this stage, beyond the documents set out in the IFA.

### **1.2 How do you save information on the Tender Information form? When I press "OK" the info vanishes.**

When completing the Tender Information Form you must save a local copy; on your computer's desktop, for example. When you complete a section of the form and press "OK" the information will be held in the form. To save this information, you need to ensure that you save changes when you close the spreadsheet. If you then open the spreadsheet again and select "Show Form", you should see the list of offices whose details you had entered previously. Selecting the office should bring up those saved details.

### **1.3 If we decide not to apply for a contract at this stage, will we be barred from applying for a contract in Mental Health for the next 3 years?**

This tender process covers the award of contracts which will run for three years from 14 October 2010. If you do not successfully tender for a new contract, you will be unable to carry out new work after 13 October 2010. We will not accept applications for contracts outside of the tender process, although it is possible that we may need to run additional tender processes in the interim, if need arises in specific locations.

## **[New Questions and Answers 17 March 2010](#)**

### **[1.4 How many documents do you need to submit?](#)**

[Section 4 of the Information for Applicants sets out all the documents related to these Invitations to Tender.](#)

[Section 9 of the Information for Applicants sets out how to submit a tender, including more detail on what documents need to be submitted.](#)

### **[1.5 As a firm we have two offices within the same Procurement Area. Do we make one bid incorporating both offices, and combining the matter starts, or do we make two separate bids?](#)**

[Section 9 of the Information for Applicants sets out how to submit your tender, including how to bid from multiple offices. If you wish to carry out work from an office, you will need to submit information about it in the Tender Information Form. See sections 9.37 to 9.42 for further details.](#)

[Top of document](#)

## **Section 2: Procurement Areas/Offices/Access Points/Presence**

**2.1 We are unclear about the definition of a "permanent presence" as for a legal aid contract. Permanent presence is defined by 2.48 - 2.49 of the contract- but the definition seems to be modified for MH work as 9.4 in Mental Health service standards says that a permanent presence does not include a requirement that the majority of MH services are accessed at the office.**

**In practical terms, we understand that some providers have offices which provide for staff and admin but are not open to the public. Is it possible to have a MH only contract with an office that is manned but is not open to the public? Clients could then be seen under the local arrangements provisions when necessary.**

Applicant Organisations need to have an Office, which meets the Permanent Presence requirements, somewhere in England and Wales.

Beyond this requirement, as long as the Applicant Organisation has at least an alternative arrangement (as defined in paragraph 9.5 of the Mental Health Specification) in the relevant Procurement Area, the requirements for tendering and the contract will be met.

### **Additional Information 11 March 2010**

Overall the provisions for presence in the mental health category are more flexible than in other categories to reflect the nature of the client base. We accept that many clients will be detained and providers will need to travel to see them at a hospital location. However there are, through the use of Community Treatment Orders and through the introduction of legislation such as the Mental Capacity Act, an increasing number of clients who require advice in the community and the essential criteria reflect the need to provide a service to both detained and non detained clients.

The definition of office is contained in Section 2 of the general specification and has application for all categories. It states that the 'office should be open and physically accessible to Clients in normal business hours'; that it must be a building this is suitable to cater for the needs of your client's and personnel....' and where clients can generally make contact with you.

In the Mental Health specification the requirement is that you must have a Permanent Presence and have an office in at least one SHA, but this does not include a requirement that the majority of Mental Health Services are accessed at the Office.

It may therefore be the case that while your office is open in that clients can communicate with you including telephoning you to make appointments and being able to speak to their adviser during normal business hours, in some instances, e.g. because of reasons of personal safety then it may be necessary to see clients away from the office. In such cases an office would be deemed open even though clients were not actually seen at the premises themselves.

**2.2 We currently deal with a number of clients in one of the High Security Hospitals. If we do not get any matter starts for this hospital following the bid tender does that mean that we can no longer deal with these clients or take on any new clients from the hospital?**

As set out in section 9.8 of the 2010 Standard Civil Contract Specification, (subject to limited exceptions) if you do not have Schedule and an allocation of Matter Starts for a particular High Security Hospital, you will not be permitted to carry out Contract Work there.

**2.3 Our current case load is mostly in one county, presumably we can operate throughout our county from either of our two offices which hold contracts for Mental Health at two locations in that county. Please confirm.**

Successful Applicants will hold only one 2010 Standard Civil Contract regardless of the number of individual Offices it has. In the circumstances above you should enter details for both your Offices on the Tender Information Form relevant to the particular Procurement Area. At least one of those Offices will need to meet the presence requirements in the Essential Criteria.

**2.4 Can we undertake cases at hospitals anywhere in the strategic health authority? For example, we could undertake a case in another county in the authority area from one of our offices in the county we are situated in?**

Yes, if you meet the presence requirements (as set out in the Essential Criteria in Annex A of the IFA) for a Strategic Health Authority Procurement Area, then you can carry out work anywhere within that area. Further details on presence requirements are set out in paragraph 2.49 of the Specification of the 2010 Standard Civil Contract, with further information in paragraph 9.4 to 9.5. The Specification is available from our contracts pages of our website:

<http://www.legalservices.gov.uk/civil/8758.asp>

**2.5 All staff members will be working in all procurement areas and there will be no set hours/staff per area. Do I therefore fill in every staff member with their regular working hours in each area?**

Sections of the Tender Information Form (TIF) relating to staff hours should be completed with reference to an average or regular working pattern. You must ensure that the sum of the hours which a staff member is recorded as working in separate areas does not exceed the total number of hours which that staff member works.

**[New Questions and Answers 17 March 2010](#)**

**[2.6 Are you restricted to the working in the PA in which you bid? Is there any flexibility in these requirements?](#)**

As set out at section 9.7 to 9.8 of the 2010 Standard Civil Contract Specification, you must use at least 70% of the Matter Starts allocated to you in a particular Procurement Area on Clients physically located in that Procurement Area at the time the Matter Start is opened. The Standard Civil Contract Specification can be found on our 2010 Standard Civil Contract pages:

<http://www.legalservices.gov.uk/civil/8758.asp>

**2.7 How can we be certain which Strategic Health Authority procurement area we fall into? For example, Kingston is in Surrey, which is within the South East Coast SHA Procurement Area, but the LSC describes Kingston as being in the London area.**

For the purposes of this tender process, you should use the locations indicated in Annex C and D of the Information for Applicants. Information on Strategic Health Authority boundaries is also available on the Strategic Health Authority websites.

[Top of document](#)

### **Section 3: New Matter Starts allocated to Procurement Areas**

**3.1 I note for each of the Strategic Health Authorities, the LSC have more or less set the 2010 NMS allocations in line with the reported matter start usage for Sept 08-Aug09. Please can you explain why then for London has the LSC set the NMS for 9940 when 15,464 matters were used between Sept 08-Aug 09. Why is there a 5500 matter start difference?**

As set out in the Mental Health Procurement Plan (which is available from the [Mental Health Tendering pages](#) of our website) we are moving from procuring services based on where providers are to allocating NMS to areas where the clients come from.

The amount of difference between allocations and previous usage will vary by Strategic Health Authority area, depending on where clients came from who were served by the providers in that area. In London, for example, providers in Sept 08 to Aug 09 served a large number of clients from outside the London area. The NMS have been allocated to the areas where the clients came from, so the London allocation looks lower than the previous usage, while the areas where the clients came from have higher allocations. The overall number of NMS is the same, however.

**3.2 What have you based the 2010 NMS allocation for each of the High Security Hospital on?**

We undertook data analysis based on closed case data and relevant post codes for individual hospitals to inform our allocation for each of the High Security Hospitals.

[Top of document](#)

## **Section 4: Supervisor Requirements**

**4.1 We are hoping to tender for a mental health contact. We employ a solicitor who would be able to carry out the work and is a member of the necessary panel but she does not meet the criteria for supervisor standard as the firm has not historically carried out mental health work whilst she has been employed by us and thus she has not had the necessary case exposure over the last 12 month period.**

**We have spoken to an extremely experienced solicitor from another firm and he would be willing to act as supervisor for us until our employee is able to reach supervisor status.**

**Our question is would this be permissible? Would you be prepared to offer a mental health contract on the basis of the above?**

As part of the Essential Criteria, Applicant Organisations must employ a supervisor who meets the Mental Health Supervisor Standards by 14 October 2010. We will not accept any external supervisor arrangements.

This Essential Criteria corresponds with Section 2 of the Standard Civil Contract Specification, which confirms that the supervisor must be employed – in addition to other supervision requirements.

Therefore, in this scenario unless the individual was able to meet the supervisor standard 8 weeks before the contract start date you would either have to employ another individual or your contract award would be withdrawn.

**4.2 Does FTE in office refer solely to numbers of fee-earner/caseworker acting for clients or does it also include support staff. i.e. in a dept consisting of two solicitors, one trainee solicitor and a secretary do I have 2, 3 or 4 FTEs? If this dept is part of a firm consisting of 35 in total including support staff do I have 35 FTEs?**

FTEs are referred to in Section 9 of the essential criteria (relating to the Supervisor Standard) and on the Tender Information Form. In both instances, we are only referring to caseworkers/supervisors who would be carrying out the work which the Applicant Organisation is tendering to deliver. We are NOT referring to support staff.

**4.3 The Supervisor form for Mental Health at question 2. (i) (a) asks us to provide documentary proof of membership if a current member of the Law Society panel on Mental Health. How should we provide this to you? Do we send a copy of the Panel membership document by post? Please confirm how you wish us to proceed.**

No documentary proof is needed at this stage. To complete section 2 (i) (a) you need to give the date of admittance or tick the box to confirm positive assessment. Any further documentary proof may be requested during the verification exercise which will take place 8 weeks before the contract start date.

**4.4 On the supervisor standard and self declaration form does the reference to part-time refer to people who only spend part of their working week doing mental health work and the remainder doing another topic or does it refer to people who only work part-time such as two days a week?**

The supervisor self-declaration form refers to those who work part-time **on mental health work**, whether this is because they only work part-time hours, or because they only spend part of their time on mental health work.

**4.5 Where can we find guidance please for completing the supervisor standard and self declaration form?**

Information on the supervisor standard and self declaration form is available from the Specialist Quality Mark pages of our website at:  
[http://www.legalservices.gov.uk/civil/qm/specialist\\_help.asp](http://www.legalservices.gov.uk/civil/qm/specialist_help.asp)

**4.6 Do you require the Mental Health Panel Certificate to be attached to each supervisor's declaration?**

No. Panel certificates do not need to be attached at this stage. We may request further information on them at the verification stage which takes place 8 weeks before the contract starts.

**4.7 Supervisor standard form - Where we have to certify our personal casework involvement-does this mean involvement as a supervisor or just work on our own caseload?**

Personal casework includes both cases in which you are directly involved and cases directly supervised by you. However, as set out in the form of the 350 hours more than 115 must be made up of personal casework.

**[New Questions and Answers 17 March 2010](#)**

**[4.8 The supervisor info form attached in the eTendering system appears to collate supervision routes 1 and 2. Route 2 was formerly used where the supervisor was not supervising tribunal applications. Has this distinction been abolished?](#)**

There is now just one supervisor standard which is set out in section 9.10 of the Mental Health Specification of the 2010 Standard Civil Contract. This can be found on the Standard Civil Contract pages of our website:  
<http://www.legalservices.gov.uk/civil/8758.asp>

**[4.10 Can you be a Supervisor in more than one category?](#)**

Yes, provided that you meet the supervisor standard in all the categories concerned.

[Top of document](#)

## **Section 5: Other Quality-Related Requirements**

### **5.1 Where do I find out what the Office Manual must contain?**

Further information about the Office Manual is available in the Specialist Quality Mark Guidance which is available on the Specialist Quality Mark pages of our website at: [http://www.legalservices.gov.uk/civil/qm/specialist\\_help.asp](http://www.legalservices.gov.uk/civil/qm/specialist_help.asp)

### **5.2 In relation to paragraph 7.19, please clarify whether a contract is awarded whether that firm would be prevented from using a specialist Mental Health barrister who is not member of the Law Society's Mental Health Review Tribunal Accreditation Scheme?**

The criterion only refers to those caseworkers who are employed by the Applicant Organisation. We would not expect counsel to be briefed as a matter of routine in cases before the Mental Health Review Tribunal. Prior authority from the LSC must be sought before counsel is briefed and the matter becomes 'Certificated' work. However, this criterion is not intended to preclude the use of specialist barristers where necessary.

[Top of document](#)

## **Section 8: Capacity Test**

### **8.1 Can I only tender using existing staff and if we were to take on another fee earner after obtaining a contract would it be possible to obtain further matter starts for that person?**

As set out at section 9.40 of the IFA, it is possible to bid on a basis which includes posts vacant at the time of bidding. Sections 10.8 and 10.9 of the IFA set out how we will treat vacant posts when testing an organisations capacity to deliver the work it has tendered for.

If, after contracts have been awarded a, the provider subsequently wishes to expand then request for more NMS can be made under the terms of the Civil Specification. However, we can give not guarantee that there will be any additional NMS available.

### **8.2 Does FTE in office refer solely to numbers of fee-earner/caseworker acting for clients or does it also include support staff. i.e. in a dept consisting of two solicitors, one trainee solicitor and a secretary do I have 2, 3 or 4 FTEs? If this dept is part of a firm consisting of 35 in total including support staff do I have 35 FTEs?**

FTEs are referred to in Section 9 of the essential criteria (relating to the Supervisor Standard) and on the Tender Information Form. In both instances, we are only referring to caseworkers/supervisors who would be carrying out the work which the Applicant Organisation is tendering to deliver. We are NOT referring to support staff.

### **8.3 It is difficult to assess how many starts we should bid for because we want to build in scope to do deprivation of liberty cases which have yet to materialise. We are conscious that the LSC wants contract holders to develop into this work which we are willing to do. If we guesstimate a number of additional starts to get this work and it does not materialise will we be penalised?**

As set out at section 9 of the IFA, you can bid for as many matter starts as you wish to, up to the maximum available in the Procurement Area/Hospital. However, you should only tender for those matters that you intend to deliver and when considering how many matters to apply for, you need to consider your capacity to undertake the work.

Section 10 of the IFA sets out how we will assess capacity when allocating matter starts. Once the contract commences Section 1 of the Civil Specification will govern how Providers can request further Matter Starts.

[Top of document](#)

## **Section 9: Selection Criteria**

**9.1 In relation to Annex B: High Security Selection Criteria and Scoring, in relation to the grading of firms in relation to the proportion of Mental Health caseworkers who are 'scheme members' (Law Society's Mental Health Review Tribunal Accreditation Scheme) are the percentages calculated over the entire proportion of Mental Health caseworkers the firm has, or is it purely in relation to the firms legal team that would deal with restricted and high secure casework**

The criterion relates to the proportion of Mental Health caseworkers in the Applicant Organisation including those who do not work directly on High Security Hospital cases. This is to provide us with a greater level of confidence that the Applicant Organisation will be able to ensure that client representation before the Tribunal can be undertaken by a member of the Law Society's Mental Health Review Tribunal Accreditation Scheme.

### **[New Questions and Answers 17 March 2010](#)**

**9.2 Will an Applicant Organisation be preferred according to what type of presence they have in a SHA?**

There are no selection criteria for the Invitation to tender to deliver work in SHAs. The selection criteria for delivering work in High Security Hospitals are set out in Annex B to the Information for Applicants. There are no selection criteria relating to presence in a SHA area.

**9.3 One of the selection criteria for High Security Hospitals favours larger firms, as it gives more points to Applicant Organisations which have carried out more restricted cases. Given that smaller firms tend to be women-owned/controlled, how does this criterion comply with equalities legislation?**

Information from the Legal Services Research Centre's diversity reports do not suggest any significant correlation between gender of ownership/control and provider size. Furthermore, from the evidence that we have regarding conduct of these types of cases, there is little correlation between the size of the firm and the volume of these cases undertaken.

This Selection Criterion represents one of our preferences for the delivery of work in High Security Hospitals and is not the sole factor we will take into account in applying the Selection Criteria. We recognise that there will be significant competition for High Security Hospital work and have set the Selection Criteria accordingly.

**[Top of document](#)**

## **Section 100: Other Requirements**

**100.1 On the ITT form at section 11, question 4 refers to organisations with limited liability, however there appears to be no appropriate response where an organisation is neither a charity or has limited liability (eg sole practitioner or partnership). Please advise.**

Unfortunately, the answer to this question should have also made reference to organisations without limited liability (in addition to charities).

Rather than making a change to the ITTs, organisations that do not have limited liability should select the answer option 'No –registered charity'.

**100.2 Can I only tender using existing staff and if we were to take on another fee earner after obtaining a contract would it be possible to obtain further matter starts for that person?**

As set out at section 9.40 of the IFA, it is possible to bid on a basis which includes posts vacant at the time of bidding. Sections 10.8 and 10.9 of the IFA set out how we will treat vacant posts when testing an organisations capacity to deliver the work it has tendered for.

If, after contracts have been awarded a, the provider subsequently wishes to expand then request for more NMS can be made under the terms of the Civil Specification. However, we can give not guarantee that there will be any additional NMS available.

**100.3 Tender Information Form – Section 1 – does the question “Tendering for tolerance?” relate to Non Mental Health work such as Community Care?**

As set out at section 1.14 of the 2010 Standard Civil Contract Specification, “Tolerance Work” is defined as “work carried out in a Category for which you do not hold Schedule Authorisation, in accordance with the rules set out at Paragraphs 2.39 to 2.45 [of the Specification]”.

**100.4 Please can you clarify what you mean by indemnity in Section 11 of the application form? What indemnity are you looking for and what is the relevant form you refer to?**

The purpose of the indemnity is to ensure that the Commission is in no worse a position, financially, when contracting with organisations with limited liability (other than registered charities) than it would have been had the Provider been a partnership or sole principal. Organisations with limited liability have traditionally deprived the Commission of the rights of recovery in relation to overpayments given their financial status whereas partnerships or sole proprietorships have not.

A draft version of the indemnity form for Civil contracts will be published on the [2010 Standard Civil Contract pages](#) of our website on 26 February.

**100.5 Our Organisation is not a limited company or a limited liability partnership but is made up of 15 corporate partners who are individual limited companies. Do you still require an indemnity form? If so please specify where the form can be obtained from.**

We will still require an indemnity form signed by all the owners of the individual limited companies.

A sample of the indemnity form, which will be sent out with contract awards, has now been published on our website (CLS>Civil Contracts>2010 Standard Civil Contracts). This form may have to be tailored to the individual constitutional circumstances of the organisation.

**100.6 We plan to leave the tolerance box blank for this bid as we will also be bidding for social welfare and family and will therefore ask for tolerance then- is this advisable and assume this will be an option within the SWL/Family bid TIF?**

There will be the option to confirm whether an Applicant Organisation is applying for NMS under tolerance on the Tender Information Form for each tender. As the tolerance Matter Starts will be awarded based on 5% of the Matter Starts you are allocated, you should indicate on each Tender Information Form if you wish to bid for tolerance work.

**100.7 If we tender for, say, 100 matter starts but do not achieve this number, what is the LSC's position?**

Section 2 of the 2010 Standard Civil Contract Specification sets out the Service Standards and Key Performance Indicators which providers are required to meet, including regarding number of NMS carried out (paragraph 2.18 and KPI 3 at paragraph 2.103). Clauses 11 (KPI) and Clause 24 (Sanctions) in the Standard Terms set out what action we may take where KPI or Service Standards are not met. The 2010 Standard Civil Contract Standard Terms and the Specification can be found at:  
<http://www.legalservices.gov.uk/civil/8758.asp>

**100.8 I assume that the hours worked question on the Tender Information Form refers to total hours worked and not to hours charged. Is this correct? Is there an upper limit on hours worked?**

The hours worked question refers to total hours worked, not hours charged. There is no upper limit on the number of hours which can be entered here, but we calculate one FTE as someone doing at least 35 hours per week, as set out at 9.39 of the IFA.

**100.9 Can a consultant qualify as Caseworker under Part B section 9.6 of the MH Specification for the purposes of applying for a Mental Health contract?**

“Caseworker” is defined in para 2.37 of section 2 of the 2010 Standard Civil Contract Specification and can include in particular circumstances an employee or a self employed Agent. Agent is in turn defined under para 2.7. and 2.8 of the Specification.

The Specification can be found on the 2010 Standard Civil Contract pages of the LSC website:  
<http://www.legalservices.gov.uk/civil/8758.asp>

### **[New Questions and Answers 17 March 2010](#)**

#### **100.10 The PQQ refers to complaints. What is the definition of complaint?**

A complaint is as defined by your own organisation's complaints policy.

#### **100.11 What is the definition of Key Personnel?**

These are defined in the Information for Applicants at section 12.

#### **100.12 If I request Tolerance matter starts, does this come out of the New Matter Starts which I am allocated? How does this affect the capacity test?**

If you request Tolerance matter starts, you will be allowed to carry out 5% of your Mental Health allocation as Tolerance matters. You will not be allocated additional New Matter Starts, so this does not affect the capacity test.

#### **100.13 We are in the process of setting up a new firm. Can this firm put in a bid, provided that the supervisors are in place before the start of the contract?**

Yes. As set out at 9.40 of the Information for Applicants, it is possible to bid on a basis which includes posts vacant at the time of bidding. There are several requirements which do not have to be met at the time of bidding, but will have to be met when the contract starts. For more information please see the Essential Criteria in Annex A of the Information for Applicants.  
See also the answer to 100.2 in this FAQ document

[Top of document](#)